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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,551	02/09/2001	Thomas G. Woolston	2043.566U14	9095
49845	7590	03/06/2009		
SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER ALLEN, WILLIAM J	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 03/06/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

### Office Action Summary

**Application No.**

09/779,551

**Applicant(s)**

WOOLSTON, THOMAS G.

**Examiner**

WILLIAM J. ALLEN

**Art Unit**

3625

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 51 and 53-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51 and 53-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Prosecution History Summary***

Claims 1-50 and 52 have been canceled.

Claims 53-65 have been added.

Claims 51 and 53-65 are pending and treated as set forth below.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/15/2005 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 8/15/05 have been considered but are moot in view of the new ground(s) of rejection. Applicant's amendment necessitated the new grounds of rejection.

***Claim Objections***

Claims 51 and 59 are objected to because of the following informalities: Claims 51 and 59 denote two distinct elements with the label "(b)" in lines 13 and 16. Appropriate correction is required.

***Specification***

The amendment filed 8/15/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is outlined below under the heading "Claim Rejections - 35 USC § 112 – First Paragraph". Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112 – First Paragraph***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 51 and 53-65 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

**Regarding claim 51**, claim 51 recites a myriad of terms and functionality not supported by the specification, as described below:

- With regards to lines 13-15, claim 51 recites:

"transfer to the plurality of consignment nodes data including text and photographs of an item for sale transmitted from one or more of the plurality of participant terminals".

As currently claimed, this feature is not supported by the specification. Contrary to the claim limitation, Applicant's specification is supportive of a participant terminal receiving text and photos from a consignment node and not to "transfer to" consignment nodes item information (note: Spec, Page 8 lines 11-14). Moreover, Applicant clearly defines a

participant as a *buyer* and a participant terminal as a *buyer terminal* (note: Spec, Page 5 lines 14-17, Page 8 lines 11-18).

- With regards to line 15, claim 51 recites "...allow one or more seller participants to directly enter the data".

The Examiner notes that there is no such recitation of a "seller participant" throughout the specification. In fact, rather than a seller participant, a consignment node user is shown to enter data to create a data record from item information (note: Spec, Page 6 lines 1-21). Additionally, as discussed above, a participant is defined to be a buyer rather than a seller (note: Spec, Page 8 lines 11-14).

- With regards to lines 16-19, claim 51 recites:  
"electronically present...to an audience of internet participants, and  
receive payment directly from one or more of the audience of internet  
participants"

The Examiner asserts that there is no support for the terms "audience" or "internet participants", let alone "an audience of internet participants".

- With regards to lines 20-21, claim 51 recites:  
"a computer system configured to create a data record from the  
data of the item for sale at the electronic marketplace *received directly  
from the one or more seller participants*"

Again, as noted above, the Examiner asserts that such recitations misconstrue Applicant's actual invention. Applicant's specification shows a consignment node user utilizing consignment node software to create a data record from item information (note: Page 6 lines 1-21). There is no recitation of a *seller participant*, let alone a seller participant providing data *directly*.

- With regards to lines 24-33, claim 51 recites an "integrated transaction processor configured to" to perform multiple tasks, including:
  - a) Accept payment from an audience of participants
  - b) Allow access to a participant account by audience of internet participants participant
  - c) Create a two-tiered pricing scheme

The Examiner notes that there is no support for the transaction processor partaking in either of the activities listed in (a) and (b) above. Furthermore, with regards to (c), Applicant's specification actually discloses a posting terminal designed to create the two-tiered pricing structure (note: Spec, Page 29 lines 15-25).

**Regarding claim 53**, claim 53 recites where an account database is configured to "allow the audience of participants to access the account, and authorize transfer of funds by book entry transaction between a participant account of a buyer and a participant account of a seller participant selling the item for sale". There is no original disclosure in which a participant can actually access accounts as the original disclosure

is limited to participants authorizing funds transfers. Moreover, there is no disclosure that a transfer of funds may be specifically made through "book entry transaction".

**Regarding claims 55**, claim 55 recites a "participant terminal" allowing seller participants to "enter a wholesale price and a retail price", as well as the "integrated transaction processor" facilitating the two tiered pricing structure. Such features lack support by the original disclosure.

**Regarding claim 56**, claim 56 recites where the integrated transaction processor "creates the two-tiered price system". Such features lack support by the original disclosure.

**Regarding claim 57**, claim 57 recites where "the computer system" is configured to prepare a shipping label. Such features lack support by the original disclosure.

**Regarding claim 58**, claim 58 recites where "the computer system" is configured to allow reposting of the item for sale. Such features lack support by the original disclosure.



**Regarding claim 59**, claim 59 is a parallel claim to claim 51. Claim 59 exhibits the same deficiencies as claim 51 and is thereby rejected for at least the same rationale.

**Regarding claims 60-62**, these claims are parallel claims to claims 53-55. Claims 60-62 exhibit the same deficiencies as claims 53-55 and is thereby rejected for at least the same rationale.

**Regarding claim 63**, claim 63 recites limiting the wholesale price to a first class of "retail participants" and providing the retail price to a second class of "retail participants". There is no such disclosure of a "retail participant", let alone a first and second class of retail participant.

**Regarding claim 64-65**, these claims are parallel claims to claims 57-58. Claims 64-65 exhibit the same deficiencies as claims 57-58 and is thereby rejected for at least the same rationale.

***Claim Rejections - 35 USC § 112 – Second Paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 2. Claims 51 and 53-65 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

**Regarding claims 51 and 53-65,** the Examiner notes that the claims are replete with ambiguous language unsupported by either the original disclosure. Throughout the claims there appears terminology that is undefined or undescribed. For example, on multiple occasions the claims recite a "seller participant", an "audience of internet participants", "book entry transaction", "retail participant", etc. Moreover, even if a particular term has been defined, it may have been used in a context which is misdescriptive of Applicant's disclosed invention. For example, claim 51 recites transferring information from a participant terminal to a consignment node (see lines 13-15), whereas Applicant's specification teaches the opposite (i.e. consignment node transfers information to the participant (buyer) terminal).

Given the indefiniteness outlined above, the Examiner has provided a marked up copy of the claims to further illustrate the nature of the ambiguities and so that a meaningful interpretation of the claims can be made. The Examiner's treatment of the claims on the merits relies upon the interpretations that follow:

1-50 (Canceled Previously).

51. (Currently Amended) An electronic marketplace system comprising:

~~a communication channel configured to~~

a computer network comprising at least one communication channel, said at least one communication channel configured to:

(a) communicatively couple a plurality of consignment nodes with a plurality of remote computers; ~~participant terminals~~[[,]]

(b) transfer to the plurality of consignment nodes item information data including text and photographs of an item to be posted for presentation for sale transmitted from one or more of the plurality of ~~participant terminals~~ remote computers; configured to allow one or more seller participants to directly enter the data,

~~(b)~~ (c) electronically present ~~the an~~ item for sale to at least one participant;  
~~using the data directly to an audience of internet participants operating the~~  
~~plurality of participant terminals; and~~

~~-(e)~~ (d) receive a payment ~~directly from one or more of the audience~~ the at  
least one participant ~~of internet participants~~ to purchase the item for sale;  
~~a computer system~~ at least one posting terminal configured to;

(a) create a data record ~~from~~ including the item information data of the  
item to be posted for presentation for sale at the electronic marketplace ~~received~~  
~~directly from the one or more seller participants; and~~

(b) create a two tier price scheme where a first tier price is offered to a first  
entity under a first pricing scheme and a second tier price is offered to a second  
entity under a second pricing scheme, wherein the second price offered under  
the second pricing scheme is different from the first price offered under the first  
pricing scheme;

a database system configured to store the data record including the item  
information data of the item presented for sale; and

an integrated transaction processor configured to;

(a) process the payment received from the at least one participant  
audience of internet participants~~[[,]]~~ and

~~(b) allow at least one of the audience of internet participants to access a participant account~~

~~(e) (b) lock the data record of the item for sale after processing the payment\_ [[.]] and~~

~~(d) create a two tier price system, wherein a first tier price is offered to a first class of buyer participants, and a second tier price is offered to a second class of buyer participants; and~~

~~an automated accounts database configured to maintain the participant account including receiving, holding, and disbursing participants funds.~~

52. (Canceled Previously).

53. (Cancel).

54. (Previously Presented) The system of claim 51 ~~53~~, wherein the item for sale comprises a non- fungible item.

55. (Currently Amended) The system of claim 51 ~~53~~, wherein the at least one posting terminal plurality of participant terminals is further configured to allow one or more users ~~seller participants~~ to enter a wholesale price and a retail price for the item for sale, and further, to facilitate the integrated transaction processor facilitates the two tier price system scheme by limiting the wholesale price to a first class of entity ~~dealer-to-dealer market including dealer participants~~ and providing the retail price to a second class of entity ~~retail market including retail participants~~.

56. (Currently Amended) The system of claim ~~51~~ 63, wherein ~~the integrated transaction processor creates~~ the two tier price ~~system~~ scheme is created by limiting ~~the a~~ whole sale price to a first class of ~~retail participants~~ entity and providing ~~the a~~ retail price to a second class of ~~retail participants~~ entity.

57. (Currently Amended) The system of claim 51, wherein the at least one posting terminal ~~computer system~~ is further configured to ~~prepare~~ print a shipping label to ship the item for sale after processing the payment and electronically transferring ownership of the item ~~to the one or more of the audience of internet participants sending the payment.~~

58. (Currently Amended) The system of claim 51, wherein the ~~computer~~ electronic marketplace system is further configured to allow the at least one participant ~~one or more of the audience of internet participants~~ sending the payment to have ~~re-post~~ the item for sale re-presented by having ~~electronically presenting~~ the item re-presented for sale again without shipping the item for sale after transferring the ownership of the item to the at least one participant. ~~one or more of the audience of internet participants~~[[.]]

59. (Currently Amended) A method of operating an electronic market system comprising:

operating a computer network comprising at least one communication channel, said at least one communication channel ~~a communication channel including~~ performing operations comprising:

(a) communicatively coupling a plurality of consignment nodes with a plurality of remote computers; ~~participant terminals{[,]}~~

(b) transferring to the plurality of consignment nodes item information data including text and photographs of an item to be posted for presentation for sale transmitted from one or more of the plurality of remote computers; ~~participant terminals, wherein the communication channel is configured such that one or more seller participants are allowed to directly enter the data;~~

(b) ~~(c)~~ (c) electronically presenting the item for sale to at least one participant; using the data ~~directly to an audience of internet participants operating the plurality of participant terminals;~~ and

(e) ~~(d)~~ (d) receiving a payment directly from the at least one participant ~~one or more of the audience of internet participants~~ to purchase the item for sale;

operating at least one posting terminal, said at least one posting terminal performing operations comprising:

~~(a) creating in a computer system~~ a data record including the item information of the item to be posted for presentation for sale data of the item for sale at the electronic marketplace;

~~(b) creating a two tier price scheme where a first tier price is offered to a first entity under a first pricing scheme and a second tier price is offered to a second entity under a second pricing scheme, wherein the second price offered under the second pricing scheme is different from the first price offered under the first pricing scheme;~~

storing in a database system the data record including the item information data of the item presented for sale; and

~~processing in performing, by~~ an integrated transaction processor, including operations comprising:

~~(a) processing the payment received from the at least one participant one or more of the audience of interact participants, and~~

~~(b) allowing at least one of the audience of internet participants to access a participant account;~~

~~(c)~~ (b) locking the data record of the item for sale after processing the payment,[[,]] and



~~(d) creating a two tier price system, wherein a first tier price is limited to a first class of buyer participants, and a second tier price is offered to a second class of buyer participants; and  
maintaining in an automated accounts database the participant account including the of receiving, holding, and disbursing participants funds.~~

60. (Cancel).

61. (Previously Presented) The method of claim 59 ~~60~~, wherein the item for sale comprises a non-fungible item.

62. (Currently Amended) The method of claim 59 ~~60~~ further comprising receiving from the ~~plurality of participant terminals~~ at least one posting terminal a wholesale price and a retail price for the item for sale entered by the one or more users ~~seller participants~~, and creating the two tier price scheme ~~system~~ by limiting the whole sale price to a first class of entity ~~dealer to dealer market including dealer participants~~ and providing the retail price to a second class of entity ~~retail market including retail participants~~ ~~[[.]]~~

63. (Currently Amended) The method of claim 59 ~~60~~ further comprising creating the two tier price ~~system~~ scheme by limiting the a whole sale price to a first class of retail participants entity and providing the a retail price to a second class of retail participants entity.

64. (Currently Amended) The method of claim 59 further comprising ~~preparing~~ printing a shipping label to ship the item for sale ~~at the computer system~~ after processing the payment and electronically transferring ownership of the item ~~to the one or more of the audience of internet participants sending the payment.~~

65. (Currently Amended) The method of claim 59 further comprising allowing the at least one participant ~~one or more of the audience of internet participants~~ sending the payment to have ~~re-post~~ the item for sale re-presented by ~~electronically presenting~~ having the item re-presented for sale again without shipping the item for sale after transferring the ownership of the item to the at least one participant. ~~one or more of the audience of internet participants at the computer system[[.]]~~

#### ***Allowable Subject Matter***

The Examiner hereby treats the interpretation on the merits and notes that the interpretation would be allowable over the art of record.

#### ***Reasons for Indication of Allowable Subject Matter***

Upon review of the evidence at hand, it is hereby concluded that the evidence obtained and made of record, alone or in combination, neither anticipates, reasonably teaches, nor renders obvious the below noted features of applicant's invention as the

noted features amount to more than a predictable use of elements in the prior art. The allowable features are as follows:

From claim 51:

a posting terminal configured to "(b) create a two tier price scheme where a first tier price is offered to a first entity under a first pricing scheme and a second tier price is offered to a second entity under a second pricing scheme, wherein the second price offered under the second pricing scheme is different from the first price offered under the first pricing scheme", and

an integrated transaction processor configured to "(b) lock the data record of the item for sale after processing the payment"

From claim 59:

"operating at least one posting terminal, said at least one posting terminal performing operations comprising (b) creating a two tier price scheme where a first tier price is offered to a first entity under a first pricing scheme and a second tier price is offered to a second entity under a second pricing scheme, wherein the second price offered under the second pricing scheme is different from the first price offered under the first pricing scheme"; and

"performing, by an integrated transaction processor, operations comprising (b) locking the data record of the item for sale after processing the payment".

It is thereby asserted by the Examiner that, in light of the above and in further deliberation over all of the evidence at hand, that the claims are allowable as the

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evidence at hand does not anticipate the claims and does not render obvious any further modification of the references to a person of ordinary skill in the art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to WILLIAM J. ALLEN whose telephone number is (571)272-1443. The examiner can normally be reached on 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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